

EXHIBIT F

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 -----x
4 In Re: PHARMACEUTICAL)
5 INDUSTRY AVERAGE WHOLESALE) MDL DOCKET NO.
6 PRICE LITIGATION) CIVIL ACTION
7 -----x 01CV12257-PBS
8 THIS DOCUMENT RELATES TO)
9 ALL ACTIONS)

10 -----x
11
12 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

13
14 August 18, 2005

15 9:23 a.m.

16
17 Deposition of DENISE M. KASZUBA,
18 held at the offices of Hogan & Hartson,
19 L.L.P., 875 Third Avenue, New York, New
20 York, pursuant to notice, before Cary N.
21 Bigelow, RPR, a Notary Public of the State
22 of New York.

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1 wholesalers frequently obtain a discount for
2 paying promptly, a discount from BMS for paying
3 promptly?
4 A. Correct.
5 Q. Can that be one to two percent?
6 A. Yes.
7 Q. Is it your experience that they
8 usually take advantage of that?
9 A. I don't know.
10 Q. You know that it is offered, that
11 discount?
12 A. I know that it is offered, correct.
13 Q. Are you aware that BMS contracts with
14 GPOs and institutions?
15 A. Yes, I am.
16 Q. Are you aware that those contracts
17 typically contain prices that are lower than
18 wholesale list price?
19 A. Correct, I am.
20 Q. Are you familiar with the charge-back
21 system?
22 A. I am familiar with it.

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1 Q. Can you describe your familiarity, please?
2 A. The charge-back system actually is an
3 EDI functionality of BMS in which we have
4 relationships with wholesalers who sell to our
5 customers we contract with and again,
6 wholesalers pay the list and for those customers
7 who have contracts and purchase through the
8 wholesalers, they actually pay the contract
9 price and to make a wholesaler whole, they
10 submit those claims via EDI and we, in turn,
11 credit the wholesaler.
12 Q. Are you involved in that process at all?
13 A. No.
14 Q. In other words, you don't process
15 charge-backs, that is not your area?
16 A. I do not process them.
17 Q. But you are familiar with them --
18 A. Correct.
19 Q. -- based on your years of experience
20 in pricing support?
21 A. Correct.
22 Q. Are you also aware that BMS pays

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1 rebates to some purchasers of BMS drugs?
2 A. Excuse me?
3 Q. Are you also aware that BMS pays
4 rebates to some purchasers of BMS drugs?
5 A. Yes, I am aware.
6 Q. What is your knowledge regarding rebates?
7 A. Just that I know they do exist.
8 Q. Do you know what types of customers
9 receive rebates?
10 A. At a high level, GPOs.
11 Q. PBMs?
12 A. PBMs.
13 Q. Do you have any individual
14 responsibility for processing rebates?
15 A. No, I do not.
16 Q. Are you aware of any transaction in
17 which the end purchaser of a BMS drug ever paid
18 more than AWP for that drug?
19 A. No.
20 Q. Is it because you are just not aware
21 or because you don't believe that anyone would
22 have paid more than AWP for a BMS drug?

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1 A. I am not aware.
2 Q. Do you believe that anyone has ever
3 paid AWP for a BMS drug?
4 A. I am not aware.
5 Q. Do you have a belief one way or the other?
6 A. No.
7 Q. Why is that?
8 A. I don't know the end results.
9 MR. MATT: This will be Exhibit Kaszuba 003,
10 please.
11 (Exhibit Kaszuba 003, documents bearing
12 production Nos. BMSAWP/0000597 through
13 BMSAWP/0000617, marked for identification,
14 as of this date.)
15 Q. The court reporter has marked as
16 Exhibit Kaszuba 003 to your deposition a series of
17 documents produced from your files containing
18 the Bates numbers 0000597 to 617.
19 I would like to draw your attention to
20 the page which has the number in the lower
21 right-hand corner of 612.
22 MR. EDWARDS: You are making a

16 (Pages 58 to 61)

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1 representation this was produced from
2 Ms. Kaszuba's files?

3 MR. MATT: Correct.

4 MR. EDWARDS: Did we tell you that at
5 some point?

6 MR. MATT: Yes. The document
7 custodian list. These pages were combined
8 in this manner and in this order.

9 Q. Can you identify what you see on the
10 page which has the Bates numbers ending in 612?

11 A. Yes. This is a memo from Tim Crew to
12 me with appropriate signatures and that is
13 addressing Atenolol.

14 Q. Can you read into the record the
15 paragraph titled "Background."

16 A. Okay.

17 "In order to accomplish a speedy
18 market introduction of Atenolol 50-milligram
19 1,000s, a wholesale list price needs to be
20 created, the price is set to establish an AWP
21 that is competitive with other generic
22 offerings. Please note that this wholesale

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1 price will not reflect actual selling price
2 since Apothecon sells Atenolol primarily at
3 contractor special offer pricing."

4 Q. Would you turn to the next page.

5 That reflects the new list price,
6 correct, \$500?

7 A. Correct.

8 Q. And it also says Apothecon anticipated AWP.

9 A. Yes.

10 Q. How do you believe that was calculated?

11 A. Actually, it was calculated by the
12 product manager by using a factor of between 20
13 to 25 percent.

14 Q. Is that the typical market factor
15 applied by one of the publications?

16 A. That range, they may.

17 Q. In this case it is 20 -- is it 20 or
18 25 percent in this instance?

19 A. I don't know.

20 Q. 25 percent, it looks like.

21 Then if you can look at the letters
22 which have your name on them from the Bates

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1 numbers in the lower right-hand corner of 597 to
2 606, can you tell me what these letters are
3 doing?

4 A. These letters are actually providing
5 information to the various data services of the
6 introduction of a new product and it is
7 providing the list price, wholesale price,
8 direct price and the approximate first ship date
9 of the product.

10 Q. These are letters you prepared?

11 A. Yes.

12 Q. Did you provide them to the
13 organizations that appear in the addressee lines?

14 A. Yes.

15 Q. Was this done under your area of
16 responsibility as a senior pricing analyst?

17 A. Correct.

18 Q. Do you know why BMS in this particular
19 instance communicated a wholesale list price of
20 \$500 when the memo that you reviewed at page 612
21 states that it won't reflect actual selling
22 price?

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1 A. Because actually what we communicated
2 to the data services from the inception of my
3 responsibility was to communicate the wholesale
4 list price.

5 Q. You don't know why, then, BMS was
6 communicating a wholesale list price when it
7 would not reflect the actual selling price of
8 this particular drug at this particular time?

9 MR. EDWARDS: Objection.

10 A. Other than what was communicated in
11 this memo from Tim Wert.

12 Q. I believe you testified earlier AWP is
13 calculated from wholesale list price; is that
14 correct?

15 A. Correct.

16 Q. In this instance, do you recognize
17 that no one would have paid AWP for this
18 particular drug at this particular time because
19 they wouldn't have even paid the list price for
20 this drug, correct?

21 A. Correct.

22 (Exhibit Kaszuba 004, documents bearing

17 (Pages 62 to 65)

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1 production Nos. BMSAWP/0000647 through
2 BMSAWP/0000651, marked for identification,
3 as of this date.)

4 Q. The court reporter has marked as
5 Exhibit Kaszuba 004 to your deposition a series of
6 documents that I can represent were produced
7 from your files to us. The documents bear the
8 Bates numbers of 0000647 to 651.

9 Drawing your attention to the first
10 page, can you describe what this memo is?

11 A. Again, this memo is provided to me to
12 actually implement a list price in the price
13 authorization system as opposed to
14 communicate -- well, yes, the document here is
15 addressing this, which I needed to input in the
16 price authorization system.

17 Q. And when you say "this," you are
18 referring to page 649; is that correct?

19 A. 649, correct.

20 Q. Going back to page 647, you received
21 this memorandum --

22 A. Correct.

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1 Q. -- in the ordinary course of your
2 responsibilities at BMS?

3 A. Yes.

4 Q. Can you read out loud for us the
5 paragraph that says "Background."

6 A. "To accomplish a rapid market
7 introduction of Atenolol with chlorthalidone,
8 wholesale list prices must be established.
9 These wholesale prices do not reflect actual
10 selling prices as Atenolol with chlorthalidone
11 tablets will be sold primarily at contract or
12 special offer pricing."

13 Q. Let's look at the page marked 649
14 which you referenced earlier.

15 Did you then communicate these new
16 prices to the publishers?

17 A. I most likely communicated the direct
18 and wholesale list price.

19 Q. That included First Data Bank?

20 A. Yes.

21 Q. MediSpan?

22 A. Yes.

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1 Q. And Red Book?

2 A. Yes.

3 Q. The anticipated AWP column that you
4 see there, who determined that?

5 A. It would have been the marketing
6 manager, George Stevenson.

7 Q. Is that based on a market factor that
8 publishers were expected to apply?

9 A. No.

10 Q. What was that?

11 Let me be more precise in my question.

12 The product manager, do you know how
13 the product manager determined the anticipated
14 AWP from the wholesale list price as listed here?

15 A. In this instance, no, I do not.

16 Q. Then page 648 of this document, it
17 says AWP competitor analysis.

18 Would you have had a role in preparing
19 this?

20 A. I do not know.

21 Q. They could have asked your department
22 for the AWP information, but you just don't recall?

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1 A. I don't recall.

2 Q. Those are all of the questions that I
3 have on that document.

4 MR. EDWARDS: I would like to note for
5 the record that on the page counsel was
6 reading from a moment ago, page 649, the
7 column "Anticipated AWP" has an asterisk and
8 the asterisk says anticipated AWP, actual
9 AWPs are set independently by pricing
10 publishers such as First Data Bank and Red
11 Book.

12 Q. Drawing your attention back to that
13 statement, Ms. Kaszuba, do you believe that the
14 anticipated AWP was obtained by the product
15 manager who prepared this from one of the
16 publishing sources?

17 A. I would not know.

18 Q. Have you ever communicated with First
19 Data Bank to ask what an anticipated AWP would be?

20 A. No, not that I recall.

21 Q. And the publishers such as First Data
22 Bank, they don't provide anticipated AWPs, they

18 (Pages 66 to 69)

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1 wholesale list price for one, for the
2 wholesaler, it doesn't have anything to do -- it
3 is not a markup factor that is used to determine
4 an AWP, correct?
5 A. No, it is not.
6 Q. Other than the BMS pocket reference
7 that we just went over, are there any other
8 pricing materials that your department sends
9 oncology salespeople?
10 A. No.
11 The sales force?
12 Q. Yes, the sales force.
13 A. No.
14 Q. I have a number of policy and
15 procedure documents I need your help with.
16 I am going to mark these as three
17 separate exhibits.
18 (Exhibit Kaszuba 010, documents bearing
19 production Nos. BMS/AWP/00337637 through
20 BMS/AWP/00337641, marked for identification,
21 as of this date.)
22 (Exhibit Kaszuba 011, documents bearing

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1 production Nos. BMS/AWP/00912299 through
2 BMS/AWP/00912305, marked for identification,
3 as of this date.)
4 (Exhibit Kaszuba 012, documents bearing
5 production Nos. BMS/AWP/00337310 through
6 BMS/AWP/00337315, marked for identification,
7 as of this date.)
8 Q. The court reporter has marked as
9 Exhibit Kaszuba 010, Exhibit Kaszuba 011 and
10 Exhibit Kaszuba 012 to your deposition
11 documents that I would characterize as
12 substantially similar but not necessarily
13 identical, and just for the record, I am going
14 to associate Bates numbers with the exhibit
15 numbers.
16 A. Okay.
17 Q. Exhibit Kaszuba 010 is Bates numbered 00337637
18 to 641.
19 Exhibit Kaszuba 011 has a cover page that says
20 "Policy and Procedures" and that is Bates
21 numbered 00912299 to 305 and Exhibit Kaszuba 012
22 also has a cover page on it that says "Policy

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1 and Procedures" and its Bates numbers are
2 00337310 to 315.
3 My first question to you, Ms. Kaszuba,
4 is do you recognize any of these three documents?
5 A. I do recognize the documents.
6 Q. What are they?
7 A. They are actually procedure for
8 pricing support.
9 Q. Do you know who prepared them?
10 A. I did.
11 Q. Do you know when they were prepared?
12 A. Over, I think, a period from, like,
13 1999 until maybe 2001-2002. I am not certain.
14 Q. Are these three different iterations?
15 A. Three different, appears to be.
16 Q. Over time, you think?
17 A. Over time, yes.
18 Q. Do you have the ability to determine
19 which was the first one that you prepared?
20 A. No, I don't.
21 Q. Do you have the ability to determine
22 which the last one was that you prepared?

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1 A. No, I don't.
2 Q. Why did you prepare these?
3 A. Instructional for the pricing support
4 coordinators.
5 Q. So you provided that to the pricing
6 support coordinators?
7 A. Correct.
8 Q. Did you provide that to anyone else?
9 A. Not that I recall.
10 Q. At the time that you prepared these,
11 were they accurate reflections of the policies
12 and procedures in pricing support?
13 A. They may have been. Notifications may
14 have been made because -- yes, this -- you know,
15 again, this is a guide to the pricing support
16 coordinator.
17 Q. Let me ask the question a little more
18 precisely, then.
19 At the time you prepared what has been
20 marked as Exhibit Kaszuba 010, at the time it was
21 prepared, was it an accurate reflection of the
22 pricing procedures employed by pricing support

30 (Pages 114 to 117)

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1 at the time?

2 A. It is a fair, accurate guide.

3 Q. Exhibit Kaszuba 010, looking at the second

4 page, the Bates numbers ending 38, the first two

5 paragraphs, that tells me that this was created

6 during the time BMS had two-tier pricing; is

7 that correct?

8 A. That is correct.

9 Q. Paragraph 4 references Apothecon list

10 prices.

11 A. Correct.

12 Q. Were the Apothecon list prices always

13 found under billing category 51?

14 A. No.

15 Q. What other billing categories applied

16 to Apothecon drugs then?

17 A. Other billing categories that applied

18 to Apothecon were 51, 56, 57, 58, 59, and then

19 41 through 4-G.

20 Q. And then do you know what purchasers

21 billing category 51 referred to?

22 A. 51 was a wholesaler billing category.

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1 Q. What was 56?

2 A. 56 was a nonretail.

3 Q. What was 57?

4 A. 57 was retail.

5 Q. And 58?

6 A. And 58 was nonretail.

7 Q. What does nonretail mean?

8 A. It is a hospital or clinic.

9 Q. And 59, billing category 5, what was

10 that?

11 A. 59 is physician.

12 Q. Could you read the sentence beginning

13 "If we never."

14 A. "If we never sell these multisource

15 products at the high billing category 51 price,

16 why not reduce the bill cap 51, 56, 57, 58 and

17 59 price."

18 Q. Can you read the next paragraph,

19 please.

20 A. "Since the AWP, average wholesale

21 price, is calculated based on the wholesale

22 list, retailers benefit from a high AWP price

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1 under the reimbursement policies of insurers."

2 Q. What was the source of your

3 information for that?

4 A. I don't recall the persons or the

5 department.

6 Q. But you would have obtained that

7 information from somewhere outside of pricing

8 support?

9 A. Yes, I would have.

10 Q. Could you please turn forward now to

11 page 640.

12 Number 3 says "Package Insert."

13 A. Correct.

14 Q. Could you read beginning with "If

15 product is not added, the following occurs."

16 A. "The AWP, average wholesale price, is

17 not established, reimbursement of drug costs by

18 insurance companies directly or through third

19 party insurers is denied without product

20 information. NAWP products will not be added to

21 state formularies."

22 Q. When you reference state formularies,

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1 what does that refer to?

2 A. That refers to Medicaid, state

3 agencies.

4 Q. Exhibit Kaszuba 011 is another policy and

5 procedures document.

6 At the time you prepared this document

7 which has been marked as Exhibit Kaszuba 011 to your

8 deposition, do you believe that it represented a

9 fair and accurate representation of the pricing

10 support policies and procedures?

11 A. Yes.

12 Q. This appears to be from the time

13 period in which BMS employed two-tier pricing,

14 correct?

15 A. Correct.

16 Q. Those are all of the questions I have

17 on that one.

18 Exhibit Kaszuba 012, another policy and

19 procedures document, at the time you prepared

20 this document represented as Exhibit Kaszuba 012, did

21 you believe that it was a fair and accurate

22 representation of the policy and procedures of

31 (Pages 118 to 121)